

# **2012 APAAC Summer Conference**

August 1 - 3, 2012  
Westin La Paloma Resort  
Tucson, Arizona



## **ALL THE OTHER KIDS HAVE PUMPED UP KICKS - Juvenile**

Presented By:

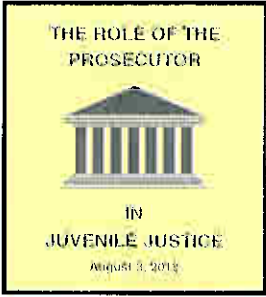
**JIM BACKSTROM**

Dakota County Attorney  
Dakota County Attorney's Office, Hastings, Minnesota

Distributed By:

**ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL**

1951 West Camelback Road, Ste. 202  
Phoenix, Arizona 85015



THE ROLE OF THE  
PROSECUTOR

IN  
JUVENILE JUSTICE

August 3, 2012

Prepared by James C. Backstrom, Dakota County Attorney, Hastings, Minnesota. Includes information from presentations by Gus Sandstrom, Jr., former District Attorney, 10th Judicial District Pueblo, Colorado.

ADM2012emporalCR2012theProsecutorinJuvenile2012

---

---

---

---

---

---

---

---

### Historical Perspective

- Prosecutors role at one time was extremely limited in juvenile court – serving mostly as a convenience to the court.
  - Emphasis on what was in the best interest of the child?
  - Juvenile Court was viewed as being in loco parentis.

---

---

---

---


---

---

---

---

### Prosecutors Role Today



- Today, prosecutors are much more active and involved in all stages of juvenile cases – from initial charging or diversion to final disposition and appeal.
  - Greater emphasis on protecting public safety.
  - Emphasis now on what is in the best interest of the victim and the public, not just the child offender.

---

---

---

---

---

---

---

---

## Ethical Standards

- **1982-- ABA Standards for Juvenile Justice Adopted** (summary by Barbara Danziger Flicker, Ballinger Publishing Company, Cambridge, Mass.)
- **Prosecution Standard 1.1**
  - An attorney for the state (prosecutor) should participate in every proceeding of every stage of every case subject to the jurisdiction of the family court, in which the state has an interest.
  - The primary duty...is to seek justice; to fully and faithfully represent the interest of the state, without losing sight of the philosophy and purpose of the family court.

---

---

---

---

---

---

---

- **ABA Code of Professional Conduct 3-1.1 (a):**

A person learned in the law should be responsible for the charging decision.

  - The individual should be an attorney or under the direct supervision of an attorney.
- **NDAA National Prosecution Standards Standard 92:**
  - Suggests prosecutor review of charging decisions in all juvenile cases.

---

---

---

---

---

---

---

## What does it mean to be a Prosecutor?

- **Definition\* of "prosecute":**
  - (1) To pursue with a view to attain, execute or accomplish.
  - (2) To apply to with continued purpose.
  - (3) To pursue for redress or punishment before a legal tribunal.

\*Webster's Encyclopedic Dictionary of the English Language, 1969.

---

---

---

---

---

---

---


## The Power of a Prosecutor

**"The prosecutor has more control over life, liberty, and reputation than any other person in America."**

\*\*\*\*

1940 Attorney General Robert H. Jackson, later Supreme Court Justice.

**This power must be wielded carefully and guided by our sense of public responsibility for the attainment of justice.**




---

---

---

---

---

---

---

---

## A Balanced Approach To Juvenile Justice Is Needed

- While a prosecutor's first commitment must always remain protection of the public safety and holding offenders accountable for their crimes -- a balanced approach is needed in addressing juvenile crime.
- Some now refer to this as the Balanced and Restorative Justice (BARJ) approach.

---

---

---

---

---

---

---

---




---

---

---

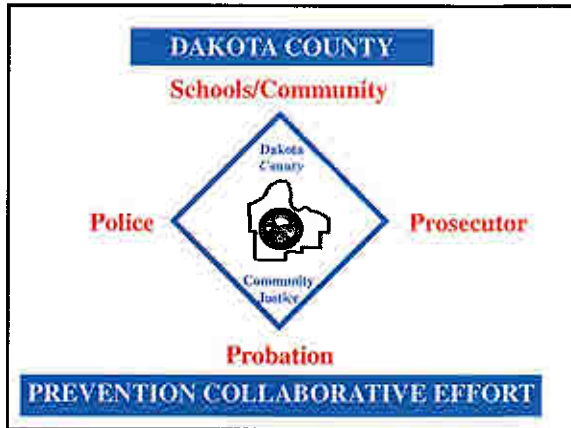
---

---

---

---

---



---

---

---

---

---

---

---

**Balanced & Restorative Justice**

**A Prosecutor's Perspective**  
James C. Backstrom  
Dakota County Attorney  
Hastings, Minnesota  
May 10, 2002

For a copy of my PowerPoint presentation,  
contact Monica Jensen at 651-438-4440 or e-mail  
request to [monica.jensen@co.dakota.mn.us](mailto:monica.jensen@co.dakota.mn.us)

---

---

---

---

---

---

---



---

---

---

---

---

---

---



---

---

---

---

---

---

---

---

### Balanced and Restorative Justice

- Protecting the community
- Restoring victims and holding offenders accountable
- Competency development



---

---

---

---

---

---

---

---

**NATIONAL DISTRICT ATTORNEYS ASSOCIATION**

**RESOURCE MANUAL AND POLICY POSITIONS ON JUVENILE CRIME ISSUES**

Adopted: December 14, 1990 Revised July 14, 2000  
National District Attorneys Association, 99 Park Street West, Suite 2100  
Atlanta, Georgia 30303 Telephone 404/524-8225 Fax 404/524-8226

---

---

---

---

---

---

---

---

TOPICS COVERED

- Organization Priorities
- Decision to Prosecute
- Adult vs. Juvenile Prosecution
- Detention
- Sentences
- Terminology
- Statements By Juveniles
- Parental Responsibility
- Information Access
- Victims' Rights
- Crime Prevention
- Guns and Dangerous Weapons
- Gangs
- Federal Responsibility

---

---

---

---

---


---

---

---

Organizational Issues

- Juvenile prosecutors must receive appropriate training and should be selected on the basis of their skill and competence.
- The practice of assigning juvenile court cases to entry level prosecutors must change.
  - Juveniles who commit criminal offenses require special attention.



---

---

---

---

---

---

---

---

- Juvenile cases are clearly as important as those involving adult offenders.
- Juvenile cases often pose technical difficulties not always seen in adult cases.
- Presentation of evidence and dispositional alternatives require expertise that the new, under-trained, or less experienced prosecutor cannot provide.
- Having a single, trained, experienced deputy who can evaluate the facts, the juvenile's criminal and social history and the dispositional alternatives in the effort to obtain justice is important.

---

---

---

---

---

---

---

---

### Vertical Prosecution of Juvenile Cases Should Occur Whenever Possible

- Vertical prosecution ensures continuity and increases the opportunity of obtaining meaningful consequences and successful rehabilitation.



- Vertical prosecution provides a message that the prosecution will stand firm.
- Having one person applying consistent criteria in an effort to hold the juvenile accountable for his or her behavior is a plus.



---

---

---

---

---

---

---

---

- Assigning all probation violations and future cases to the same prosecutor also ensures continuity.



- When vertical prosecution is not possible (such as in transfer cases) the current prosecutor should discuss all of the details surrounding the juvenile's background with any juvenile prosecutor who has previously dealt with the youth.
  - This ensures the most effective prosecution and the most appropriate sentence.

---

---

---

---

---

---

---

---



### Juvenile Cases Should be Processed as Quickly as Possible

- Time is a major consideration in handling juvenile cases.
- The longer it takes to complete a juvenile case, the more likely it will be that the long-term message will be lost.



---

---

---

---

---

---

---

---



- **Speedy processing** is most important when dealing with serious, violent or habitual offenders.



- This will show that violations of community expectations of behavior will not be tolerated and will be **swiftly** sanctioned.

---

---

---

---

---

---

---



The Prosecutor serves as the Gatekeeper to the Juvenile Justice System

#### Charging Function

The Prosecutor determines who should be charged with crimes, who should be diverted from prosecution and whether to seek waiver or transfer to adult criminal court.

Prosecutorial discretion is the heart of the prosecution function.

---

---

---

---

---

---

---

- Prosecutorial discretion requires legal expertise, consistency of purpose, and accountability.
- Such decisions need to be made based upon all of the available facts and evidence.
- While the prosecutor's primary duty is to seek justice and protect the public safety, in exercising prosecutorial discretion it is also appropriate to consider the special interests and needs of the juvenile to the extent possible without compromising the public safety.
- Some States do not provide for prosecutors to make initial charging decisions in juvenile cases.
  - Such a policy is wrong and it should be changed.

---

---

---

---

---

---

---

### Reasons Why Prosecutors Should Make Charging Decisions in Juvenile Court:



- Prosecutors have a responsibility to represent the state in court on juvenile cases.
- Prosecutors are trained on the legal aspects of the charging process.
- Prosecutors have access to both the criminal and social background of the juvenile.
- Prosecutors give public safety a high priority in their decision making process.

---

---

---

---

---

---

---

---

- Prosecutors take into consideration the interests of the victim and have a process for giving and receiving information from victims



- Prosecutors are more easily accountable to the public than are other individuals in the juvenile justice system.
- Prosecutors are governed by ethical standards not applicable to others.

---

---

---

---

---

---

---

---

- Prosecutors are unable to utilize an effective prosecution policy or effectively implement prosecution standards without control over the charging decision.
- Charging is an executive function -- it should not be performed by the judicial branch.
- Charging is not an appropriate police or corrections department responsibility because of the need to ensure proper legal review of the sufficiency of the evidence to proceed.
- Charging decisions should be made by an independent prosecutor -- free from political influence or pressure.

---

---

---

---

---

---

---

---

## Development of Charging and Disposition Guidelines

- Charging and disposition guidelines for juvenile cases should be developed by the prosecutor's office.




---

---

---

---

---

---

---

---

## Dakota County Attorney Guidelines for the Charging and Disposition of Juvenile Cases



James C. Backstrom  
Dakota County Attorney  
Hastings, Minnesota

Adopted: February, 1999  
Revised: October, 2003

For a copy, contact Monica Jensen at 651-438-4440 or e-mail request to [monica.jensen@dakotacounty.org](mailto:monica.jensen@dakotacounty.org).

---

---

---

---

---

---

---

---

## Diversion

- The decision to divert a case from prosecution is a charging decision -- it is a determination that sufficient evidence exists to file a charge in court but that the goals of prosecution can be reasonably reached through other means.
- Prosecutors should consider establishing diversion programs for appropriate first-time or low-level juvenile offenders who pose no apparent danger to the public safety.




---

---

---

---

---

---

---

---

- Diversion programs should hold the juvenile offender accountable and ensure that restitution is made to the victim.
- The NDAA has established criteria for diversion programs.




---

---

---

---

---

---

---

The NDAA lists the following factors to be considered in determining whether to formally charge a case or to divert it from prosecution:

- (1) the seriousness of the alleged offense;
- (2) the role of the juvenile in the offense;
- (3) the nature and number of previous cases involving the juvenile and the disposition of those cases;
- (4) the juvenile's age and maturity;
- (5) the availability of appropriate treatment or services;

---

---

---

---

---

---

---

- (6) whether the juvenile admits guilt or involvement in the offense;
- (7) the dangerousness or threat posed by the juvenile to persons or property;
- (8) the provision of financial restitution to victims, and recommendations of the referring agency, victim and advocates for the juvenile.




---

---

---


---

---

---

---

- Diversion programs can also play an important role in education and prevention efforts.



- Prosecutors should take an active role in crime prevention efforts.
  - This includes truancy initiatives, peer court programs and many other efforts.

---

---

---

---


---

---

---

---

**Dakota County Attorney's Office**



**Youth Accountability Program Guidelines**

James C. Backstrom  
Dakota County Attorney

- The prosecutor should be involved in establishing the eligibility criteria and other guidelines for all diversion programs.

---

---

---


---

---

---

---

---



- Diversion programs should require juveniles who do not successfully complete the program to be referred back to the prosecutor's office for prosecution.

---

---

---

---

---

---

---

---

- **Develop diversion program guidelines**  
 -- this will lead to public confidence that eligibility standards for the program are fair, nondiscriminatory and appropriate.
- Such guidelines will also assist juvenile offenders, their attorneys and parents in clearly understanding who is eligible for the program and what the program requirements will be.

---

---

---

---

---

---

---

### Diversion Programs

- Obtain public input as to your diversion programs:
  - \* Annual Public Surveys
  - \* Public Presentations
- Consider the appropriate name for your program:
  - \* Diversion
  - \* Youth Accountability

---

---

---

---

---

---

---

### Youth Accountability Programs

- Alcohol & Marijuana offenses
- Property offenses
- Fire setting behaviors
- Peer Court (sanctions by high school youth serving as jurors)

39

---

---

---

---

---

---

---

## Prosecution of Juveniles In Adult Criminal Court



- Transfer, waiver, or certification of juveniles to adult court is an important consideration.

---

---

---

---

---

---

---



## Juvenile justice

'Abolish' the system and start over

---

---

---

---

---

---

---

Three categories of laws exist:

- (1) the legislature mandates the transfer of a juvenile case to adult court;
- (2) the prosecutor is vested with the discretion to transfer a juvenile case to adult court; and
- (3) the juvenile court judge is vested with the discretion to determine whether a juvenile case should be transferred to adult court.

---

---


---

---

---

---

---



- Most jurisdictions follow the juvenile court judge discretion model.
- However, in most of these jurisdictions, it is the prosecutor who has the discretion to determine whether the process should be initiated.

---

---

---

---

---

---

---

- The primary factors affecting the decision to prosecute a juvenile in adult court should be the **seriousness of the crime** and the **threat to public safety** -- not what is in the **best interests of the child**.
- Many states have recently adopted **changes in law** pertaining to **adult court prosecution** of juveniles and/or **blended sentencing**.
  - Minnesota adopted such changes in 1995.

---

---

---

---

---

---

---

## Minnesota's Blended Sentencing Law

### Extended Juvenile Jurisdiction Cases

Prepared by  
James C. Backstrom  
Dakota County Attorney  
Hastings, Minnesota  
March, 2003

For more info: Contact Monica Jensen at 651-438-4440  
or [monica.jensen@co.dakota.mn.us](mailto:monica.jensen@co.dakota.mn.us)

---

---

---


---

---

---

---



- The **NDAA** recommends that, where factually appropriate, prosecutors be given the discretion to directly file cases in adult court for serious, violent and habitual offenders.
- The **NDAA** also believes that once a juvenile case has been transferred to adult court all further prosecution of crimes committed by the youth also should occur in adult court regardless of the seriousness of the offense. 

---

---

---

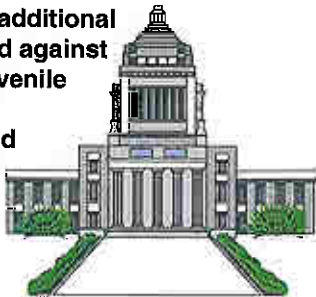
---

---

---

---

- In those situations where a prior case in which a juvenile is being tried as an adult has not been completed, additional charges filed against the same juvenile in unrelated cases should be dealt with in adult court.




---

---

---

---

---

---

---

#### Legislative changes being considered in juvenile justice across the United States:

- **CERTIFICATION PROCESS**
  - Movement toward prosecuting more violent juvenile offenders as adults
- **PUBLIC ACCESS TO JUVENILE PROCEEDINGS**

#### Legislative changes which should be considered in juvenile justice:

- **PURPOSE OF THE SYSTEM**
  - "Punishment" rather than "Rehabilitation"
  - "Protection of the public safety" rather than "what's in the best interest of the child"
- **TERMINOLOGY**
  - "State v. \_\_\_\_\_" rather than "In the matter of the welfare of . . ."
  - "Criminal complaint" rather than "juvenile delinquency petition"
  - "Sentence" rather than "disposition"

---

---

---

---

---

---

---

### **The Prosecutor is an Advocate For Justice, the Victim and Community Values**

- It is easy for a prosecutor in juvenile court to lose focus of the need to serve as an advocate for justice and community values.
- A prosecutor's primary duty is to seek justice and protect the public safety.
- Be fair and impartial -- seek the truth and pursue accountability.



---

---

---

---

---

---

---

- The prosecutor's actions should be consistent with community values -- to ensure this, juvenile prosecutors should attend and participate in community meetings or other activities concerning juvenile crime or crime prevention.



---

---

---

---

---

---

---

### **Victims**

- The same rights afforded victims in adult criminal cases should be afforded victims in juvenile criminal cases.
- Keep crime victims properly notified of important decisions in the case.
- Victims should be notified of and offered the opportunity to attend all hearings in a juvenile case.



---

---

---

---

---

---

---

- Victims should be contacted, if possible, prior to accepting a plea agreement.



- Ensure that the victim has the opportunity to address the court prior to disposition.
- Ensure that restitution is paid to make the victim whole.

---

---

---

---

---

---

---

**The Juvenile Prosecutor must serve as a trial and dispositional advocate as well as an effective negotiator**

- Ensure that plea negotiation and other decisions involving juvenile cases are made in a timely fashion.
- Cases requiring the detention of a juvenile offender should receive priority.




---

---

---

---

---

---

---

- Treat juvenile witnesses (including the suspect) fairly and with sensitivity to their age.
- Be involved in all plea negotiations.



- Be involved in all decisions regarding the disposition of a case.




---

---

---

---

---

---

---

**Adopt written guidelines concerning plea negotiations and dispositions.**

**Review reports prepared by the corrections department.**

**Consider what the penalty would be if the crime had been committed by an adult.**

**Consider factors specific to the youth.**

**Ensure that the public safety is protected.**



---

---

---

---

---

---

---

- **Recommend a disposition that is just and holds the juvenile appropriately accountable and protects the public and victims' interests.**
- **Educate yourself and your juvenile court on the availability and appropriateness of dispositional resources in your jurisdiction.**
- **Continue to represent the State's interests in all post-disposition hearings or appeals.**
- **Follow-up on cases to ensure that dispositions are being properly carried out.**

---

---

---

---

---

---

---

**The Prosecutor should be involved in Community Outreach efforts to address juvenile crime**

- **Address juvenile justice issues in public speeches and presentations.**
- **Participate in juvenile crime prevention programs.**
- **Law enforcement efforts alone cannot solve the juvenile crime problem.**



---

---

---

---

---

---

---

**There are two main ways to effectively reduce crime in America:**

1. Ensure that criminal offenders are apprehended, prosecuted and held appropriately accountable for their acts.
2. Focus time and resources on early intervention, education and crime prevention efforts.

### **Juvenile Diversion Programs and Early Intervention Efforts**



**James C. Backstrom**  
**Dakota County Attorney**

September 2007

For a copy of my PowerPoint presentation, contact Monica Jensen at 651-438-4440 or e-mail request to [monica.jensen@co.dakota.mn.us](mailto:monica.jensen@co.dakota.mn.us)

### **Think Outside the Box**

- Look for new ideas
- Test out new programs and initiatives
- Be innovative



## How can we solve our problems with juvenile crime in America?

The answer is not as complex as you might think.

We need to:

- Get back to the basics of life; and
- Invest In Our Kids!



---

---

---

---

---

---

---

---

## WHAT IS THE SOLUTION?

For details of my 28 ideas of things we need to do to find solutions to the juvenile crime problem, see my PowerPoint program on:

**Solving the Juvenile Crime Problem:  
A Prosecutor's Perspective**

For a copy of my PowerPoint presentation, contact Monica Jensen at 651-438-4440 or e-mail request to [monica.jensen@co.dakota.mn.us](mailto:monica.jensen@co.dakota.mn.us)

---

---

---

---

---

---

---

---

## What Does The Future Hold?

- How will history define the next generation?
- You have a front row seat in the answering of this important question.
- As a juvenile prosecutor, you play a vital role in defining the future for children in your community.

---

---

---

---


---

---

---

---

### Six Reasons for Being a Juvenile Prosecutor



- That's what the boss said I'd do!
- It is part of my career development.
- I care about kids!
- Nothing keeps you feeling young like kids!
- I know where I can make real impact!
- It is the most challenging assignment.

---

---

---

---

---

---

---

---



**Working with juvenile cases may be the most important work any prosecutor will do in his/her career.**

---

---

---

---

---

---

---

---

### The Most Important Reason for Being a Juvenile Prosecutor:

**You Can Make a Difference**  
in shaping the future of youth in your community.

---

---

---

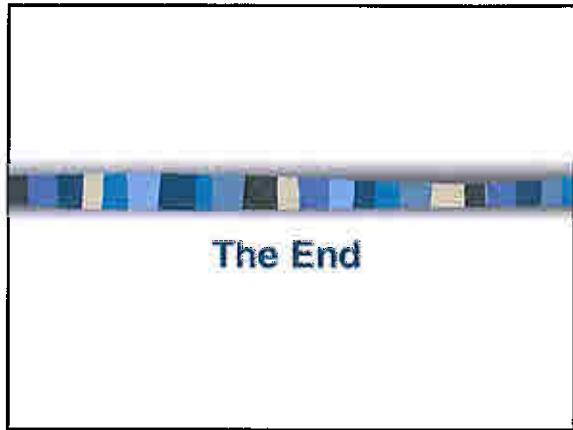
---

---

---

---

---



---

---

---

---

---

---

---





## **America's Juvenile Justice System Is Unjustifiably Under Attack**

James C. Backstrom  
Dakota County Attorney  
July 10, 2012

America's system of juvenile justice is under scrutiny (some might say attack) from many groups and on many fronts today. The MacArthur Foundation's Model for Change Initiative – focusing in part on juvenile competency in our justice system, argues that failing to take into consideration the fact that there are significant differences in cognitive development of adolescents and adults that affect the ability to make judgments has led to a counterproductive system that too frequently treats young offenders as adults.

Amnesty International has a campaign to eliminate life without parole as a sanction for serious and violent juvenile offenders. The U.S. Supreme Court on June 25, 2012 decided the issue by ruling that a juvenile cannot constitutionally be sentenced to life without parole if such sentence is a statutory mandate. [*Miller v. Alabama*, 567 U.S. \_\_ (2012)].

The Campaign for Youth Justice is a nationwide group urging juvenile justice reform, including the rejection of adult court prosecution for most juvenile offenders. [Citing a recent poll on February 7, 2007 commissioned by the National Council on Crime & Delinquency which seemingly shows the public overwhelmingly supports rehabilitation and treatment for young people in trouble and not incarceration in adult jails or prisons.]

The Annie E. Casey Foundation has for years sponsored juvenile justice reform through its Juvenile Detention Alternatives Initiative (JDAI) – which Dakota County (along with Hennepin and Ramsey Counties in Minnesota) are pleased to be a part of. We should be insuring that we are detaining youth for the right reasons and utilizing alternative placements and programming whenever possible.

The Juvenile Justice Coalition of Minnesota has also been established in our state. This group describes itself as a systems change and advocacy based statewide organization that promotes state level juvenile justice reform.

Its long-term goals are laudable – in fact I don't disagree with any of them – they urge:

- reducing the number of youth involved and recidivism in the juvenile justice system;
- reducing the number of youth in out-of-home placement and improving transition for youth into and out of such placements;
- increasing success in school-based settings;
- improving communication and coordination in the juvenile justice system; and
- reducing disproportionate minority contact in the juvenile justice system.

While I do not have fundamental disagreements with some of the underlying principles of the work of most of these organizations, I do quarrel with the implication of the MacArthur Foundation and The Campaign for Youth Justice that we should not be prosecuting juvenile offenders as adults under any circumstance.

I also disagree with Amnesty International that life without parole should never be a sanction available to a juvenile offender. I would agree that such a sanction should be used very sparingly and only in the most egregious cases, but there may well be occasions where this penalty is appropriate and warranted. Additionally, I believe the recent interpretation of this issue by the U.S. Supreme Court in *Miller v. Alabama* was an appropriate conclusion that will not cause significant adverse consequences to our nation's justice system.

I also quarrel with the general implication from some of these organizations that our system of juvenile justice is somehow out of control and in need of major reform. To the contrary, I believe that in most states in America, including Minnesota, our system of juvenile justice is properly balanced and is not in need of major reform or overhaul.

While almost all juvenile codes in our country were modernized in the mid to late 1990's, including right here in Minnesota, contrary to the belief of some of the organizations mentioned above, these changes were not overly harsh on juvenile offenders. It was time for the juvenile codes of America to strike a proper balance between protecting the public safety, holding youth appropriately accountable for their crimes and rehabilitating youthful offenders – and that's what these changes did.

There is nothing wrong with a system of juvenile justice that emphasizes the need to protect the public safety, rather than only looking at what's in the best interests of the child, as juvenile court had traditionally done before these juvenile code revisions occurred.

We need a balanced approach to juvenile justice in America – and such a balanced approach has long been supported by our nation's prosecutors. The National District Attorneys Association passed a resolution to this effect over a decade ago.

There is a common misperception among some in our society that prosecutors are some sort of power-hungry individuals who enjoy locking people up for as long as we possibly

can, including juvenile criminal offenders. While prosecutors do have a lot of power and authority in our system of criminal justice – both as to adults and as to juveniles – it is not power that is unchecked. In rare instances, courts have determined that prosecutorial error or misconduct has occurred and these problems have been addressed appropriately. However, in the vast majority of cases, prosecutorial discretion is exercised with fairness and equity each and every day.

As a prosecutor, I don't enjoy locking people up, most particularly kids, but I do it when it needs to be done. I do it to protect my community. I do it to bring a measure of justice to the victims of crime, and, though most don't realize it at the time, I do it to provide incentive to those who break our laws to not do so again. I don't do it out of some thrill or joy of locking people up. And for the most part, I don't do it alone – most sentencing authority properly rests with the judge under our system of justice.

When the decision is made to lock someone up, it is in essence a reflection of failure. Somewhere along the line someone has failed to recognize the warning signs of danger, or the seeds of destruction that perhaps could have been stopped before it was too late. Some parent has failed their child by not providing the direction, guidance and moral compass they need to safely and lawfully navigate their way through life. Or some adult has abused or neglected a child and left him or her with deep rooted anger, or chemical addictions or mental health problems may have at some point lead them down a road to self destruction and crime. My colleagues and I see such failures all too often in the people we prosecute for committing crimes.

That is why I, and many prosecutors across our state and nation, emphasize prevention and early intervention programs. I have created several youth accountability programs (formerly called diversion programs) for first time juvenile offenders – programs that emphasize it is wrong to break the law and hold youth accountable in alternative ways outside of our court system. My hope of preventing crime is why I have spoken to over 16,000 young people in my community about the negative impacts bullying behavior, chemical abuse and the importance of having respect for our laws and for each other.

No prosecutor in America would rather charge, convict and lock up a criminal offender, than to prevent the crime from occurring in the first place. That is why I am an active member of an organization called Fight Crime: Invest in Kids and have served in the past as a board member of Minnesota's Youth Intervention Programs Association. These organizations encourage active early intervention and prevention efforts, such as funding quality preschool education programs; parenting programs for at-risk new mothers; and mentorship programs for troubled youth. Studies show that programs such as these are effective and will reduce crime in the long run<sup>1</sup>.

These are the ways we can reduce crime in America and keep prosecutors and judges from having to make the tough calls about charging kids as adults for serious, violent or habitual criminal acts.

One common misperception regarding our system of juvenile justice in America is that prosecutors are seeking to prosecute juvenile offenders as adults all the time (and in many cases even for low level offenses). These perceptions, which are often fueled by the extensive media coverage of juvenile crimes of violence and misapplied statistics, are simply wrong.

Few jurisdictions in our country prosecute more than 1 to 2 percent of juvenile offenders as adults and in some jurisdictions, this statistic is even lower. In Dakota County, for example, we prosecute as adults only about ½ of 1% of juveniles referred to my Office. And very few jurisdictions in America prosecute misdemeanor level offenders in the adult court system. This would perhaps be warranted if the juvenile has a long history of adjudications for criminal behavior – for sooner or later you reach the point that enough is enough and more significant sanctions are warranted. And it is appropriate if a juvenile offender has already been prosecuted and convicted of a felony offense as an adult and a later misdemeanor occurs.

There are a few exceptions to the standard practice of not prosecuting misdemeanors in adult court across our country. For example, former District Attorney Harry Shorstein in Jacksonville, Florida started a program where many youth with prior offenses were charged and convicted as adults for their misdemeanor crimes, but these youth received sentences to a segregated youth-only section of the county jail, where the primary focus of their incarceration was on education and rehabilitation. Adult court prosecution may well have been the best thing that ever happened to these troubled kids. For the first time in many of their lives, these kids had some stability, focus and responsibility forced upon them in hopes of correcting their behavior before they became involved in more serious criminal activity.

Another fallacy which is frequently put forth by various organizations (as was documented in a recent study sanctioned by the Center for Disease Control) is that there are over 200,000 youth under the age of 18 prosecuted as adults every year in America for misdemeanor level crimes. What they don't explain, however, is that these statistics fail to note that 13 states in America have statutes that create a lower age of majority for criminal behavior – either age 16 or 17.

Clearly in those states, 16 or 17 year old youth who are charged with misdemeanor level crimes are treated as adults, but this has nothing to do with any certification or transfer of otherwise juvenile offenders to the adult system – these youth are considered to be adults by virtue of their state's laws. You can argue as to these states that these laws are inappropriate – and I wouldn't necessarily disagree with you – but you can't use statistics from these states to argue that we are transferring hundreds of thousands of kids to the adult court system for low level criminal offenses, for this simply is not the case.

Another fallacy that persists in reference to the juvenile competency arguments put forth by the MacArthur Foundation and others is that the competency of kids is not now being properly weighed and considered in the decisions of whether youth should be

prosecuted as adults. The reality of the matter is that a juvenile's age and maturity are always taken into consideration in the disposition of a case. In fact, that is the reason why we have a juvenile court in the first place – a system by the way which has long been and continues to be supported by America's prosecutors.

A juvenile's age and maturity is properly considered at all stages of a criminal case, including the decision to seek adult court prosecution and the ultimate sentence to be handed down for the crime upon conviction. But age and maturity are not the only factors to be considered – so too must we consider the threat to public safety, the seriousness of the crime, the juvenile's level of culpability and criminal history, the juvenile's lack of willingness to participate in prior juvenile programs that had been made available, and the adequacy of punishment or future programming available in the juvenile justice system. All of these factors are carefully weighed and considered by prosecutors and judges who must make the tough calls of whether a juvenile should face adult court prosecution and sanctions for a crime. And when this is done, as it is each and every day across our country, I would submit that our system of juvenile justice is in proper balance. It is not in my estimation, a system in need of replacement or major overhaul.

I am a firm believer that those exercising discretion in our system of juvenile justice, i.e. our nation's prosecutors and judges, must be given ample options from which to choose when making the difficult decisions they face. Minnesota has been a leader in this area by being one of the first states in America to adopt a "blended sentencing" model. At least fifteen states have similar middle ground approaches or "one last chance" options as they are sometimes called. Our blended sentencing model, known as Extended Juvenile Jurisdiction (EJJ) and others like it are designed for those youth who have committed a serious offense which does not initially warrant adult court prosecution, but which requires greater sanctions and/or longer supervision by the juvenile court than is provided in the traditional juvenile court system. Blended sentencing models, which are supported by America's prosecutors, combine some juvenile and adult sanctions for appropriate offenders, provide for stayed adult sanctions to be imposed at a later date should the offender not conform to the conditions of the juvenile court disposition, provide incentives for the youth to remain law abiding in the future and lengthen the period of supervision over the youth by the juvenile court. Blended sentencing models are appropriate and necessary in the continuum of sanctions available for serious, violent and habitual juvenile offenders, especially for younger youth committing very serious crimes.

Another important distinction that is often lost in the discussion of human brain development and competency is that there is a fundamental difference between weighing the risks associated with one's actions and understanding right from wrong. A teenager may well make decisions without fully considering the risks involved (which are decisions made in the frontal lobe of a person's brain, the last area to fully develop according to scientists) but few teenagers over the age of 14 do not know that it is wrong to rape or kill someone. Prosecutors and judges must, therefore, weigh this level of understanding of the wrongfulness of the action with the juvenile's age and maturity,

and the other appropriate factors I previously noted, in deciding whether or not prosecution as an adult it warranted.

The simple fact of the matter is that juveniles who commit serious and violent crime, particularly older youth, should in many instances face adult court sanctions. So too must this remedy remain available for youth who have committed less serious offenses who have a long history of convictions for crime after crime for which no juvenile court disposition has been effective. I believe that if this issue is fairly framed, as it seldom is in discussions of this important topic, most Americans would agree.

Caution must be exercised when reaching conclusions based upon opinion polls, for the answer to many questions hinges on how the issue is framed. For example, if a question is asked, as it was last year in a poll conducted by the National Council on Crime and Delinquency, whether or not you support rehabilitation and treatment for youth committing crimes rather than prosecuting them as adults and incarcerating them for long periods, most persons would probably agree that rehabilitation and treatment are the preferable option. But if the question asked is: "Would you support adult court sanctions for a 16 or 17 year old young man who ties up, tortures and kills an elderly woman in an effort to steal her identity and money?" Few, if any, would say we should prosecute such a case in the juvenile system. Most would understandably want such a violent criminal put away for a long time, if not forever.

As prosecutors, we often face tough calls concerning the decision of whether or not to prosecute juveniles as adults. Many of these decisions are very difficult. I support a case-by-case analysis which weighs all appropriate factors in the decision making process. Most systems of juvenile justice across our country, including Minnesota, provide exactly that, as it should be. While these decisions are not always easy, we must insure the continuation of a process where discretion exists in the professionals, i.e. prosecutors and judges, who are empowered to make them.

One challenge yet to be addressed in many states' juvenile codes is how should we address extreme acts of violence by very young offenders? For example, we all recall the tragic circumstances in Jonesboro, Arkansas when a school shooting occurred involving 10 and 11-year-old youth who gunned down multiple victims.

Are you adequately prepared for such a tragedy involving very young offenders occurring in your jurisdiction? While, the answer in my opinion in Minnesota is clearly "no", should we prosecute even younger kids below age 14 as adults? A bill was put before the Minnesota Legislature in 2010-2011 to lower the age of adult court prosecution to 13, as a result of a recent tragedy in northern Minnesota where a 13-year old killed a younger child, apparently intentionally. This change was opposed by Minnesota's County Attorneys – for prosecuting kids younger than 14 as adults is not, in the opinion of Minnesota's prosecutors, the answer to deal with these types of tragedies.



However, I believe that we need to do something to address these concerns. Several years ago I proposed a Serious Youthful Offender category for youth 10-13 years of age who commit extremely violent crimes in our state. Under my proposal, such 10-13 year olds would not face adult court prosecution or even stayed adult prison sentences, but would merely remain under the oversight of the juvenile court until age 21.

There may be other options, but I think any state's juvenile justice system must be prepared to have some sanctions beyond traditional juvenile court available when these types of egregious acts of violence are committed by very young offenders. Maintaining public confidence in our juvenile justice system requires that something more be done than traditional juvenile court prosecution with jurisdiction automatically ending at age 19 in such extreme situations, as it would currently in Minnesota.

There are no simple solutions to the problem of youth violence. Traditional law enforcement efforts must continue with new tools to deal with today's violent juvenile criminals and to effectively deal with non-violent offenders before it is too late. Juvenile criminals must be prosecuted and dealt with appropriately by our system of criminal justice, including adult court sanctions when appropriate for serious and violent offenders. We must send a clear message that violence such as that seen in school shootings will not be tolerated in America. We must also look for every means possible to prevent these crimes from occurring in the first place. The long-term solution requires that we step back and look at the underlying causes of juvenile crime and mobilize everyone in America to get involved and work together towards addressing these issues.

---

<sup>1</sup> The following studies should be reviewed in this regard:

- Schweinhart, L.J., H.V. Barnes and D.P. Weikart, *Significant Benefits: The High/Scope Perry Preschool Study Through Age 27* (Ypsilanti, MI: High-Scope Press, 1993).
- Lally, J.R., P.L. Mangione and A.S. Honig, "The Syracuse University Family Development Research Program: Long-Range Impact of an Early Intervention with Low-Income Children and Their Families" in D.R. Powell, ed., *Parent Education as Early Childhood Intervention: Emerging Directions in Theory, Research and Practice* (Norwood, NJ: Ablex Publishing, 1988).
- Jones, M.A. and D.R. Offord, "Reduction of Antisocial Behavior in Poor Children by Nonschool Skill Development," *Journal of Child Psychology and Psychiatry and Allied Disciplines* 30 (1989), 737-750.
- Miller, B.M., *Out-of-School Time: Effects on Learning in the Primary Grades* (Wellesley, MA: School-Age Child Care Project [now called the National Institute on Out-of-School Time], Center for Research on Women, Wellesley College, 1995); and Posner, J.K. and D.L. Vandell, "Low-Income Children's After-School Care: Are there Beneficial Effects of After-School Programs," *Child Development* 65 (Society for Research in Child Development, 1994) 440-456.
- Olds, D.L., et al., "Long-term Effects of Home Visitation on Maternal Life Course and Child Abuse and Neglect: Fifteen-year Follow-up of a Randomized Trial," *Journal of the American Medical Association*, Vol. 278, No. 8, August 27, 1997, pp. 637-652. and Olds, et al., "Long-term Effects of Nurse Home Visitation on Children's Criminal and Antisocial Behavior: 15-Year Follow-up of a Randomized Controlled Trial," *Journal of the American Medical Association*, Vol. 280, No. 14, October 14, 1998, pp. 1238-1244.
- National Institute of Justice, "Helping to Prevent Child Abuse — Future Criminal Consequences: Hawaii Healthy Start" (October 1995)